MT LEGISLATIVE HISTORY

Chapter 339 1987

Bill (H) 651 S_____ Original bill & hist. ✓ C

H. Committee on Natural Resources

Hearing Date(s) FEB 13 ✓C

_____ ___C

_____ ___C

_____ ___C

Date Out FEB 13 ✓C

S. Committee on Natural Resources

Hearing Date(s) MAR 18 ✓C

_____ ___C

_____ ___C

_____ ___C

MAR 18 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

2/07 INTRODUCED
2/07 REFERRED TO TAXATION
2/07 FISCAL NOTE REQUESTED
2/09 FISCAL NOTE RECEIVED
3/04 HEARING
3/16 TABLED IN COMMITTEE

HB 650 INTRODUCED BY ROTH
DEFINING MOTORBIKE AND PROHIBITING OPERATION WITHIN ONE-HALF MILE OF CITY LIMITS

2/07 INTRODUCED
2/07 REFERRED TO HIGHWAYS & TRANSPORTATION
2/17 HEARING
2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/20 2ND READING NOT PASSED AS AMENDED 62 31

HB 651 INTRODUCED BY JENKINS, ET AL.
APPROPRIATION RIGHT REDUCTION ASSOCIATED WITH LAND SET ASIDE IS NOT ABANDONMENT

2/07 INTRODUCED
2/07 REFERRED TO NATURAL RESOURCES
2/13 HEARING
2/14 COMMITTEE REPORT--BILL PASSED
2/17 2ND READING PASSED 93 0
2/18 3RD READING PASSED 88 0

TRANSMITTED TO SENATE
2/19 REFERRED TO NATURAL RESOURCES
3/18 HEARING
3/19 COMMITTEE REPORT--BILL CONCURRED
3/23 2ND READING CONCURRED 48 0
3/25 3RD READING CONCURRED 49 0

RETURNED TO HOUSE
3/28 SIGNED BY SPEAKER
3/30 SIGNED BY PRESIDENT

3/30 TRANSMITTED TO GOVERNOR
4/03 SIGNED BY GOVERNOR
CHAPTER NUMBER 339 EFFECTIVE DATE: 4/03/87

HB 652 INTRODUCED BY HARP
CREATE THE GOVERNOR'S REVENUE ESTIMATING COUNCIL; REQUIRING GOVERNOR TO USE COUNCIL'S ESTIMATE IN BUDGET PREPARATION; PROVIDING CODIFICATION INSTRUCTION
BY REQUEST OF GOVERNOR

2/07 INTRODUCED
2/07 REFERRED TO TAXATION
2/19 HEARING
2/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/23 FISCAL NOTE REQUESTED
3/02 2ND READING NOT PASSED AS AMENDED 77 15
3/03 FISCAL NOTE RECEIVED

HB 653 INTRODUCED BY ADDY
APPROPRIATION FOR LOW-INCOME ENERGY ASSISTANCE

2/07 INTRODUCED
2/07 REFERRED TO APPROPRIATIONS
2/09 HEARING

2

HOUSE BILL NO. 651

INTRODUCED BY JENKINS, E. SMITH, NATHE, HOFFMAN, KOLSTAD, WALKER, ROTH, ASAY, SWIFT, DEVLIN, IVERSON, BACHINI, ABRAMS, ELLISON, PATTERSON, HANSON, SWITZER, POFF, STRATFORD, GRINDE, GILBERT, GLASER, SALES, DRISCOLL, D. BROWN, COMPTON, MENKE, KELLER, SCHYE, CORNE', KOEHNKE, DEMARS, STANG, HARPER, WEEDING, TVEIT, MANUEL, HAMMOND, SWYSGOOD, WHALEN, SPAETH, HOLLIDAY, O'CONNELL, VINCENT, HANNAH, THAYER, VAN VALKENBURG, HALLIGAN, MCCALLUM, BOYLAN, RAPP-SVRCEK, BULGER, FARRELL, HANSEN, MARKS, QUILICI, MANNING, SEVERSON, ANDERSON, HOFMAN, AKLESTAD, BISHOP, BLAYLOCK, HIRSCH, BARDANOUVE

IN THE HOUSE

FEBRUARY 7, 1987 — INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

FEBRUARY 14, 1987 — COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.

FEBRUARY 16, 1987 — PRINTING REPORT.

FEBRUARY 17, 1987 — SECOND READING, DO PASS.

FEBRUARY 18, 1987 — ENGROSSING REPORT.

THIRD READING, PASSED. AYES, 88; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1987 — INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

MARCH 19, 1987 — COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 23, 1987 — SECOND READING, CONCURRED IN.

MARCH 25, 1987

THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 26, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

LC 1510/01

HOUSE BILL NO. 651

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A LAND SET-ASIDE UNDER A STATE OR FEDERAL CONSERVATION PROGRAM AND THE RESULTING REDUCTION IN USE OF A WATER APPROPRIATION RIGHT DOES NOT COMPRISE AN INTENT TO ABANDON PART OR ALL OF THE APPROPRIATION RIGHT AND MAY NOT BE USED TO ESTABLISH A PRIMA FACIE PRESUMPTION OF ABANDONMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-404, MCA, is amended to read:

"85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

~~(3)~~(4) ~~This section does~~ Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Effective date. This act is effective on passage and approval.

-End-

Montana Legislative Council

INTRODUCED BILL
HB-651

50th LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

OUSE ILL MBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
08	1/30/87	1/30/87	2/2/87	2/2/87							
16	2/2/87	2/2/87	2/11/87			2/11/87					
53	2/2/87	2/2/87	2/6/87	2/6/87							
67	2/2/87	2/2/87	2/2/87			2/2/87					
34	2/4/87	2/4/87	2/9/87			2/9/87					
16	2/9/87	2/9/87	2/11/87		2/11/87						
29	2/11/87	2/11/87	2/13/87	2/13/87							
31	2/11/87	2/11/87	2/13/87	tabled							
12	2/13/87	2/13/87	2/18/87			2/18/87					
15	2/16/87	2/16/87	2/20/87			2/20/87					
51	2/13/87	2/13/87	2/13/87	2/13/87							
57	2/13/87	2/13/87	tabled								
51	2/13/87	2/13/87	2/13/87			2/13/87					
7	2/16/87	2/16/87	2/18/87	tabled							

a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Jones on February 13, 1987, at 12:30 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL NO. 657: REP. PAUL RAPP-SVRCEK, District #51, sponsor, stated many years ago, the fishing was good along the Clark Fork River. In the early 1960's, the Noxon Rapids Reservoir was built, and at the time the dam was being built, there was some promise made of a fish ladder being built along side the dam , in order to preseve the fishery. He stated for one reason or another, the fish ladder was never built, and the dam was, which created a large run of the river reservoir. Since that time, trout fishing in that portion of the river has diminished dramatically. The only way to keep the trout fishing going in that part of the river at the present time, is for the DFWP to constantly stock the river. For the last seven years, the Department has done a commendable job in attempting to establish a small mouth bass fishery in the Noxon Rapids Reservoir. Approximately two years ago, in a matter of a couple days, the water level of the reservoir was dropped, estimates run between 30 to 75 feet, and if effectively destroyed five years of work in establishing this bass fishery in that area. So, that is the reason for the bill, and he pointed out to the committee, that his original intention was to prevent that kind of thing from happening ever again, but he found in drafting the bill, you cannot do that, because you would run afowl of the Federal Energy Regulatory Commission rules and says, we cannot regulate federal power facilities. So, what the bill does, is require operators of hydroelectric facilities to consult with these agencies regarding their operations and how they might affect fisheries once that initial consultation takes place, then in the future, if they are going to alter their operations, such that it would adversely affect the fisheries, they would again have to notify these Departments involved and also provide adequate notice that this draw down is going to take place. He urged the committee to support this bill.

PROPONENTS: STAN BRADSHAW representing Trout Unlimited stated they do support this bill, however, he did have one suggestion that may be considered regarding the Department consultation.

He stated their water development and conservation projects are important to them, and to the state they live in, and he urged the committee to not pass this bill.

REP. AL MEYERS, District #51, stated for the record he is opposed to the bill, and feels if the fisheries were protected, he wondered what would happen to the reservoirs and the affect this would have on them. He felt sure this would then lead to bigger and more complicated problems, that would eventually end up in front of the Legislature.

RON SCHOFIELD, a concerned individual, stated he feels this is a bad bill, and the voluntary sharing of information between departments and agencies should exist. Therefore, he is opposed to the bill.

NO FURTHER OPPONENTS

REP. RANEY asked Rep. Rapp-Svrcek after hearing all the opposition, he wondered if he thought the bill was still workable. REP. RAPP-SVRCEK stated definitely.

REP. HARPER stated he would like to understand the nature of the consultation between operators of the dam and DFWP and wanted to know who the fishery biologists are, because in looking at the bill, he stated that maybe the committee would feel better if they knew there was an ongoing consultation and we knew especially before large draw downs were planned, there would be a consultation.

JIM FLYNN, Director, DFWP, stated it is his understanding that when these sorts of projects come on line and are licensed by the Federal government, there is a formal process that involves the Department as a fish and wildlife management agency. When the license has been issued by the Federal authorities and the project is approved and on line, changes in the plans are not necessarily required, however, the Department is generally notified when they retain the plan, and changes are anticipated.

In closing, Rep. Rapp-Svrcek stated how important he felt it was to be given notice at the times these draw downs will occur, in order to prevent this type of destruction from happening. He stated we cannot do anything about what has happened in the past, however, this bill can serve to prevent anything like this from happening in the future. He asked the committee's favorable support of HB 657.

HEARING CLOSED ON HB 657.

HOUSE BILL NO. 651: REP. LOREN JENKINS, District #13, stated in the 70's there were ranches that had reservoirs on them, and wells, in addition to their irrigation.

The Federal government tried to get a handle on this sod busting, and developed a program that the operator could seed back to grass, due to all the marginal ground in the area. He stated the problem that was brought to his attention by FCS in the state water laws, says that if you don't use those water rights regarding a reservoir, well, or irrigation for ten years, they are then considered abandoned and you lose those rights. He stated if this in fact, is marginal ground, you would want these reservoirs on them in order to save the grass which would benefit the ranches. It was proposed if an appropriator which is a farmer or rancher, ceases to use all or part of his appropriation right to the land to which the water is applied to or a beneficial use is contracted under a state or federal conservation program, a set aside in resulting reduction in use of the appropriation right is not represented and the attempt by the appropriator to holding or partially abandoning the appropriation right or if they do not comply with the terms and conditions attached to the right as the appropriation of the water right. He felt this bill would serve it's purpose and felt that no major amendments would be proposed to the bill, because he feels it is written tight enough to serve as a clarification, as well as direction for these people involved.

PROPONENTS: BOB STEPHENS, representing the Montana Grain Growers Association stated they support this bill and urged the committee to do the same.

RAY BECK representing the Conservation District Division for the Department of Natural Resources wished to voice support on behalf of DNRC for this piece of legislation.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support this bill, and he felt it would better accommodate the farmers and ranchers that could fall under this act regarding their water rights involving abandoned sites.

STAN BRADSHAW representing Trout Unlimited stated they do support this bill, and he urged the committee's favorable recommendation.

JEANNE KLOBNAK representing the Montana Wildlife Federation stated MWF does support HB 651 and they feel that any measure to protect the rights of the property owners and the water resource is greatly needed in the State.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing Rep. Jenkins stated he felt this was an important bill, and he urged the committee to give it a "do pass."

HEARING CLOSED ON HB 651.

HOUSE BILL NO. 661: REP. GARY SPAETH, District #84, stated the 310 permits, basically found in HB 310 and implemented controls at work about ten years ago that work in streambeds in the state, are recently trying to have some sort of review process that can be done with regard to the changing of these streambeds. He stated that review process was set up with the primary Conservation District supervisors involved in cooperation and association with the Department of Fish, Wildlife and Parks, and other interested parties. Obviously, irrigation ditches, companies or whatever, are very much involved in the streams, because they have to do with the water, and everthing most likely went along smoothly. However, he was aware of some problems in the state, but it was basically interpreted that they historically had done different types of projects as far as diverting water in streams for the ditch that fills these areas. He stated they were not necessarily reviewed or did not need to be reviewed each time you did it. He stated if you are on a stream irrigating and the stream goes down as it does through the summer, you will have to constantly go up there during the irrigation season and make some adjustments as you go through, particularly some of the fast flowing mountainous type streams in his area, stating Rock Creek would be a good example. He stated the Attorney General came up with a ruling last spring that said of any of those types of diversions were not grandfathered like a lot of the districts were interpreted, and they would have to be regulated and obtain a permit. He stated it takes time to process one of these permits through the conservation districts, having the supervisors come out there and it could occur two or three times during a summer they must go out. This bill addresses that problem, so that those irrigation districts can continue to do pretty much what they have historically been doing out there. He stated he has brought these amendments as a recommendation from everyone involved, and it's what they feel would best work out to accommodate the irrigation companies and ditches in making sure they get their water out of the creek, while at the same time taking care of protecting the streambeds and stream management. He feels this is a prime example of what happens when the parties get together, and their problems can be worked out to the benefit and satisfaction of everyone, and he urged the passage of HB 661 with the proposed amendments.

PROPONENTS: RAY BECK representing the Montana Association Conservation District for the Department of Natural Resources stated DNRC does support the amendments offered by the sponsor.

REP. HARP then made a substitute motion to TABLE HB 657. Question was called, the motion CARRIED, with Reps. Harper, Miles and Cohen voting NO.

HOUSE BILL NO. 651: REP. SMITH moved HB 651 DO PASS. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO.661: REP. RANEY moved HB 661 DO PASS. He then moved the amendments to the bill offered by Rep. Spaeth (Exhibit 8). Rep. Harper pointed out in addition to Rep. Spaeth's amendments, this would also demand a title change, and stated this could simply be included with Rep. Raney's original motion. Question was then called on the amendments, the motion CARRIED unanimously. REP. RANEY moved HB 661 DO PASS AS AMENDED. Question was called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-2.

ADJOURNMENT: Being no further business to come before the committee, the meeting was adjourned at 2:47 p.m.

TOM JONES, Chairman

DAILY ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	✓		
CLYDE SMITH, VICE CHAIRMAN	✓		
KELLY ADDY	✓		
TOM ASAY	✓		
JOHN COBB	✓		
BEN COHEN	✓		
ED GRADY	✓		
JOHN HARP	✓		
HAL HARPER	✓		
MIKE KADAS	✓		
AL MEYERS	✓		
JOAN MILES	✓		
MARY LOU PETERSON	✓		
BOB RANEY	✓		
RANDE ROTH	✓		
ANGELA RUSSELL	✓		
BRUCE SIMON	✓		
BILL STRIZICH	✓		
STAFF: EQC HUGH ZACKHEIM			

STANDING COMMITTEE REPORT

FEBRUARY 13 19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 651

☑ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES Chairman

FIRST reading copy (WHITE color)

CHAIRMAN--SEN. TOM KEATING
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: M-W-F TIME: 1:00 P.M.
SECRETARY-NADINE MCCURDY

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES---	COMMITTEE ACTION---	REREFERRED TO COMM---	DATE OUT-
HB0404	2/16	3/11		CONCUR		3/11
HARP, JOHN			PROVIDES A TIME LIMIT FOR CENTERLINE DECISIONS			
HB0408	2/10	3/09		CONCUR		3/9
IVERSON, DENNIS			PROVIDES THAT RESERVED WATER MUST BE USED IN THE BASIN OF DIVERSION			
HB0453	2/16	3/20 3/25		CONCUR		3/25
BRANDEWIE, RAY			AUTHORIZES DEPT OF COMMERCE TO REPRESENT TOURISM IN FLATHEAD LAKE MANAGEMENT			
HB0467	2/17	3/18		CONCUR		3/18
REAM, BOB			AMENDING HAZARDOUS WASTE ACT TO INCORPORATE CHANGES IN FEDERAL LAW			
HB0534	2/16	3/13 3/18 4/25		CONCUR		3/18
HANNAH, TOM			REVISING AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE			
HB0629	2/19	3/23 3/25		ADVERSE REPORT		3/25
REAM, BOB			GENERALLY REVISES THE METAL MINE RECLAMATION LAWS			
HB0642	3/02	3/23 3/25		CONCUR AS AMENDED		3/25
SPAETH, GARY			REVISES WATER PERMIT LAWS; QUALIFIES MISSOURI BASIN WATER RESERVATIONS			
HB0645	3/02	3/09 3/16		CONCUR		3/16
BROWN, DAVE			CLARIFIES IMPACT PLAN SECTION OF HARD-ROCK MINING IMPACT ACT			
HB0651	2/19	3/18		CONCUR		3/18
JENKINS, LOREN			APPROP. RIGHT REDUCTION ASSOCIATED WITH LAND SET ASIDE IS NOT ABANDONMENT			
HB0661	2/23	3/23 3/25		CONCUR AS AMENDED		3/25
SPAETH, GARY			REDEFINE "PROJECT" TO CLARIFY DOES NOT INCLUDE DIVERSION FOR IRRIGATION			
HB0718	2/23	3/20 3/23		CONCUR AS AMENDED		
HARPER, HAL			[illegible]			

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 18, 1987

Meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on March 18, 1987, at 12:30 p.m., in Room 405 of the State Capitol.

ROLL CALL: All members were present.

DISPOSITION OF HOUSE BILL 534: Sen. Lynch moved that HB 534 BE CONCURRED IN.

Sen. Halligan made a substitute motion that HB 534 amendments BE ADOPTED, and he said HB 534 would set a ridiculous precedent for Legislature. All the testimony received against the bill would be set aside. Therefore Sen. Halligan submitted amendments that would meet all the industries half-way. (Exhibit 1)

Sen. Lynch stated facitiously that Butte shouldn't have to live with the State standards either. He stated that he wished Butte had some of the industry that Billings has. He would like to see jobs in the State and he thought that HB 534 should be passed.

Sen. Walker supported Sen. Halligan's amendments because he said the federal standards are subject to review right now. Furthermore, he wanted to know what kind of statement would the legislature be making to those plants who had already spent money to comply with State standards; such as, the plants in Great Falls, and he was told that Great Falls does not the the SO_2 problem. SO_2 problem exists in Billings. Sen. Keating said that the companies had given their word as members of the community that they would continue to bring SO_2 emissions down in Billings. Monitors have been placed where readings are the worst.

Sen. Stimatz mentioned that State Board of Health has never tried to shut down the Billings' industries; and if the emissions were truly dangerous, he thought the Board would have shut them down in spite of the pending lawsuit.

Sen. Yellowtail said he felt that there's no incentive to negotiate for DHES without Sen. Halligan's amendments.

Sen. Halligan said that the DHES is better able to work on the problem and that corporations don't elect senators, but people do.

Katherine Orr, Department of Health and Environment Sciences (Solid and Hazardous Waste Bureau), stated that she helps administer the program and also drafted the bill. The bill is intended to maintain parity with federal requirements. Montana would lose ability to run the program independently and would lose grant monies as well without HB 467. Ms. Orr said that rule-making authority would be expanded. Ms. Orr said there were no opponents in the House.

Don Engles, Montana Chamber of Commerce, supported HB 467.

OPPONENTS: None.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: When Sen. Keating asked Ms. Orr if HB 647 would tighten up language concerning generators of waste or disposal, she said it could; however, there are extra requirements regarding taking correction action. Ms. Orr stated that when and if DHES issues a permit it must ensure conditions to protect human health are included.

Sen. Stimatz asked what the main hazardous wastes are in the State. Roger Thorvilson replied: petroleum refinery sludge; wood treating operations; and organic cleaning solvents.

Sen. Gage asked if the State has a bonding requirment and Ms. Orr said yes, one option--trust agreement performance bond.

CLOSING: Rep. Ream said that without HB 647, the State would not only lose money, but also the program.

Sen. Lynch moved that HB 647 BE CONCURRED IN. Motion CARRIED unanimously. Sen. Halligan will carry the bill.

CONSIDERATION OF HOUSE BILL 651: Rep. Jenkins, House District 13, said that HB 651 was his "motherhood and apple pie" bill. The title was listed as an act to provide that a land set-aside under a state or federal conservation program and the resulting reduction in use of a water appropriation right does not comprise an intent to abandon part or all of the appropriation right and may not be used to establish prima facie presumption of abandonment. Rep. Jenkins said that under the 1985 Farm Act, farmers can seed ground back to grass under a 10-year contract and this would hold the water rights.

PROPONENTS: Jo Brunner, Montana Water Development Associa said the HB 651 is a very important bill that should be passed. Farmers are scratching and searching for ways to keep their operations intact. HB 651 would help alleviate some problems, by allowing the farmers to keep their water rights.

Mr. George Ochenski had asked Ms. Brunner to go on record for EIC as supporting the bill.

Terry Murphy, Montana Farmers Union, said that HB 651 is a common sense bill for reserving water rights for legitimate purposes. Mr. Murphy asked the committee to pass HB 651.

Gary Fritz, DNRC, also stood in support of bill.

OPPONENTS: None.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: None.

CLOSING: Rep. Jenkins said he has nothing more to say.

Sen. Weeding moved that HB 651 BE CONCURRED IN. Motion CARRIED unanimously.

CONSIDERATION OF HOUSE BILL 831: Rep. Holliday, House District 31, introduced HB 831 as being drafted by request of DNRC. Rep. Holliday distributed detailed explanation of the bill and what it would do. (Exhibit 2) She said that all HB 831 does is to amend laws relating to Board of Water Well Contractors, requiring licensing by the Board of those persons who install monitoring wells, as well as increasing the compensation for board members. Rep. Holliday said there were some proposed technical amendments that were drawn up by Gail Kuntz, and Rep. Holliday asked that the amendments be adopted.

Ron Guse, Board of Water Well Contractors, distributed a written summary of his presentation. (Exhibit 3) Mr. Guse said that the board was established by legislature in 1961, and at that time it was attached to the Department of Health. The board consists of two drillers, plus one representative from the Department of Natural Resources, one representative from the Bureau of Mines and one from the Department of Health and Environmental Sciences. At present, the board is attached to DNRC for administrative purposes only and also to take avantage of some of the facilities. He then read his summary from his testimony.

STANDING COMMITTEE REPORT

March 12 19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 651

THIRD reading copy (BLUE color)

APPROP. RIGHT PRODUCTION ASSOCIATED WITH LAND SET ASIDE IS NOT ABANDONMENT

STRIKING (NEEDING)

respectfully report as follows: That HOUSE BILL No. 651

BE CONCURRED IN

STATE

AMENDED

SENATOR THOMAS F. KEATING, Chairman.

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 18, 19

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	✓		
Sen. Cecil Weeding, Vice Chairman	✓		
Sen. John Anderson	✓		
Sen. Mike Halligan	✓		
Sen. Delwyn Gage	✓		
Sen. Lawrence Stimatz	✓		
Sen. Larry Tveit	✓		
Sen. "J.D." Lynch	✓		
Sen. Sam Hofman	✓		
Sen. William Yellowtail	✓		
Sen. Elmer Severson	✓		
Sen. Mike Walker	✓		

Each day attach to minutes.

19

DATE March 18, 1987

COMMITTEE ON [illegible]

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible] OCHENSKI	MT. ENV. INF. CNTR	467	X	
[illegible]	Bd. Water Well Contractors	651 831	X	
[illegible]	MWDA	651 358	X	
[illegible]	DHES	467	neither	
[illegible]	Mt. Chamber of Commerce	467	X	
[illegible]	Bd of Water Well Contr	831	X	
[illegible]	MT Farmers Union	651 358	X	
[illegible]	MT Assn Conservation Districts	HB 651	X	
[illegible]	MT. Stockgrowers/ MT. Cattle Women	HB 651	X	
[illegible]	Northern Plains Res. Council	HB 467	X	
[illegible]	MT League of Women Voters	HB 467	X	
[illegible]	MT Sierra Club	HB 467	X	
[illegible]	The Env. Lobby	651	X	

(Please leave prepared statement with Secretary.)

HOUSE BILL NO. 651

INTRODUCED BY JENKINS, E. SMITH, NATHE, HOFFMAN, KOLSTAD, WALKER, ROTH, ASAY, SWIFT, DEVLIN, IVERSON, BACHINI, ABRAMS, ELLISON, PATTERSON, HANSON, SWITZER, POFF, STRATFORD, GRINDE, GILBERT, GLASER, SALES, DRISCOLL, D. BROWN, COMPTON, MENKE, KELLER, SCHYE, CORNE', KOEHNKE, DEMARS, STANG, HARPER, WEEDING, TVEIT, MANUEL, HAMMOND, SWYSGOOD, WHALEN, SPAETH, HOLLIDAY, O'CONNELL, VINCENT, HANNAH, THAYER, VAN VALKENBURG, HALLIGAN, MCCALLUM, BOYLAN, RAPP-SVRCEK, BULGER, FARRELL, HANSEN, MARKS, QUILICI, MANNING, SEVERSON, ANDERSON, HOFMAN, AKLESTAD, BISHOP, BLAYLOCK, HIRSCH, BARDANOUVE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A LAND SET-ASIDE UNDER A STATE OR FEDERAL CONSERVATION PROGRAM AND THE RESULTING REDUCTION IN USE OF A WATER APPROPRIATION RIGHT DOES NOT COMPRISE AN INTENT TO ABANDON PART OR ALL OF THE APPROPRIATION RIGHT AND MAY NOT BE USED TO ESTABLISH A PRIMA FACIE PRESUMPTION OF ABANDONMENT; AMENDING SECTION 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-404, MCA, is amended to read:

"85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of

nonuse to create a prima facie presumption of abandonment.

~~(3)~~(4) ~~This section does~~ Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Effective date. This act is effective on passage and approval.

-End-